

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 \* \* \*

4 JOHN RUIZ,

5 Plaintiff,

6 v.  
7 NEVADA DEPT. OF CORRECTIONS, *et*  
*al.*,

8 Defendants.

Case No. 2:18-cv-00091-RFB-EJY

**ORDER****AND****REPORT AND RECOMMENDATION**

10 Pending before the Court is Plaintiff's Response to the Order to Show Cause ("OSC") why  
 11 this case should not be dismissed. ECF No. 102.

12 **I. BACKGROUND**

13 Plaintiff originally asserted several constitutional claims against eighteen defendants. ECF  
 14 No. 12. As of August 23, 2018, all Defendants except three were dismissed. *See* the OSC (ECF  
 15 No. 101) at 1. The three remaining Defendants include Richard Garcia, Celia Chacon, and Raul  
 16 Rosas against whom a clerk's default was entered on May 7, 2020. ECF No. 101. In the  
 17 Court's Order of June 2, 2022, it required Plaintiff to show cause why his case should not be  
 18 dismissed for failure to serve Chacon and Garcia, as well as for failure to prosecute default judgment  
 19 against Rosas. *Id.* Plaintiff filed his response on June 27, 2022.

20 In Plaintiff's response to the OSC, he reiterates efforts to serve the remaining Defendants in  
 21 2019 and 2020, which the Court identified in its June 2, 2022 Order. *Compare* ECF Nos. 101 and  
 22 102 at 1-2. Plaintiff also raises issues with respect to the law librarian at High Desert State Prison  
 23 ("HDSP") allegedly denying his access to the courts while further arguing COVID also limited his  
 24 court access. Unrelatedly, Plaintiff asks the Court to order HDSP to move him to an outside  
 25 hospital. ECF No. 102 at 2-3. These concerns do not address the fact that there is no  
 26 good address for Garcia or Chacon and repeated efforts to serve them have failed. ECF No.  
 27 101 at 1-2. Plaintiff also does not even touch upon his failure to seek default judgment against  
 28 Rosas.

1           **II. DISCUSSION**

2           Federal Rule of Civil Procedure 4(m) requires a complaint to be served within 90 days of  
 3 filing. “If a defendant is not served within 90 days after the complaint is filed, the court—on motion  
 4 or on its own after notice to the plaintiff—must dismiss the action without prejudice against that  
 5 defendant or order that service be made within a specified time. But if the plaintiff shows good  
 6 cause for the failure, the court must extend the time for service for an appropriate period.” *Id.* If the  
 7 U.S. Marshal in the district in which a prisoner brings a claim cannot “effectuate service through no  
 8 fault of his own, e.g., because the plaintiff failed to provide sufficient information or because  
 9 the defendant is not where the plaintiff claims, and the plaintiff is informed, the plaintiff must seek  
 10 to remedy the situation or face dismissal.” *Haskins v. Ayers*, Case No. C 08-02226 CW (PR), 2010  
 11 WL 539864, at \*1 (N.D. Cal. Feb. 9. 2010) (internal citations omitted). In this case, despite several  
 12 requests for addresses and attempts at service, Garcia and Chacon have not been served. *See* ECF  
 13 No. 101 at 1-2. It is Plaintiff’s responsibility to provide good addresses for defendants he seeks to  
 14 serve. *Hamilton v. Thompson*, Case No. C 09-00648 CW (PR), 2010 WL 4942276, at \*1 (Nov. 24,  
 15 2010) (internal citations omitted). In his current filing, Plaintiff offers no new information regarding  
 16 the whereabouts of either of these individuals. “When advised of a problem accomplishing service,  
 17 a *pro se* litigant must attempt to remedy any apparent defects of which [he] has knowledge.” *Id.*  
 18 (internal citation and quote marks omitted). Plaintiff was advised of the problem regarding failing  
 19 to serve Garcia and Chacon, and provides nothing that would allow for service at this belated date.  
 20 This leads the Court to recommend Plaintiff’s claims against these two Defendants be dismissed  
 21 without prejudice.

22           With respect to Rosas, the Court will grant Plaintiff one additional thirty (30) day period  
 23 within which to seek a default judgment. The Court refers Plaintiff to Rule 55(b) of the Federal  
 24 Rules of Civil Procedure and the factors he must establish under *Eitel v. McCool*, 782 F.2d 1470  
 25 (9th Cir. 1986). These favors include “(1) the possibility of prejudice to the plaintiff, (2) the merits  
 26 of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake  
 27 in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was

1 due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure  
2 favoring decisions on the merits.” *Id.* at 1472.

3 **III. ORDER**

4 Accordingly, IT IS HEREBY ORDERED that Plaintiff must move for default judgment  
5 against Defendant Raul Rosas no later than **September 1, 2022**. Failure to do so will result in a  
6 recommendation to dismiss this defendant without prejudice.

7 **IV. RECOMMENDATION**

8 IT IS HEREBY RECOMMENDED that Defendants Celia Chacon and Richard Garcia be  
9 dismissed without prejudice for failure to effect service.

10 Dated this 2nd day of August, 2022.

11   
12 ELAYNA J. YOUCAH  
13 UNITED STATES MAGISTRATE JUDGE

14  
15 **NOTICE**

16 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be  
17 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has  
18 held that the courts of appeal may determine that an appeal has been waived due to the failure to file  
19 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also  
20 held that (1) failure to file objections within the specified time and (2) failure to properly address  
21 and brief the objectionable issues waives the right to appeal the District Court’s order and/or appeal  
22 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.  
23 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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